

lysing agent to blood volume ratio of a single lysing agent". The Examiner's grounds for rejection are hereinafter traversed, and reconsideration is respectfully requested.

Contrary to the Examiner's assertion, in the paragraph spanning pages 8-9, the present disclosure teaches that "predetermined volumes of lysing agent A and/or lysing agent B are aspirated from the lysing chamber 18 and 19, respectively, by the pump unit 16, and injected through the valve matrix 14 into the mixing cuvette 13, along with the blood sample and diluent to formulate the sample/blood reagent mixture, as described further below" (emphasis added). Further, the last paragraph on page 27 of the present specification teaches that "[a]s illustrated above, the volume of lyse A and/or the volume of lyse B (and other lyse agents may be added if necessary) can be automatically adjusted and mixed with the blood/diluent mixtures in the mixing cuvette to effect proper separation of blood cells on a species-by-species basis" (emphasis added). Accordingly, the original specification clearly teaches that either one or both lysing agents can be added to create the reagent mixtures for multi-species analysis. It is therefore submitted that the rejection under § 112 should be withdrawn for at least for this reason.

Rejections under 35 U.S.C. § 102

Claims 27-30, 32-35, 38 and 40-46 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. No. 5,316,725 to Carver. The Examiner's grounds for rejection are hereinafter traversed, and reconsideration is respectfully requested.

Effective November 29, 1999, subject matter is disqualified as prior art under 35 U.S.C. 102(e) if that subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Because the present application has been filed under 37 C.F.R. 1.53(d) as a continued prosecution application, the above revision of 35 U.S.C. 102(e) now applies to the present application.

As set forth in the attached Declaration Establishing Common Ownership, Applicant avers that the present continued prosecution application Ser. No. 09/039,789 and U.S. Patent No. 5,316,725 to Carver cited against the patentability thereof were, at the time that the present invention was made, assigned or under obligation to be assigned to the same entity. In

support of this statement, applicant submits herewith a Declaration Establishing Common Ownership. In view of this finding, the subject matter of the '725 patent should be disqualified as prior art under 25 U.S.C. 102(e), and the rejection should be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 27-30, 32-35, 38 and 40-46 stand rejected under 35 U.S.C. 103(a) as being obvious over the '725 patent, or unpatentable over Yamamoto or Collect Hematology in view of the '725 patent. The Examiner's grounds for rejection are hereinafter traversed, and reconsideration is respectfully requested.

As averred in the Statement Establishing Common Ownership, the subject matter of the '725 patent should be disqualified as prior art, and this rejection should be withdrawn.

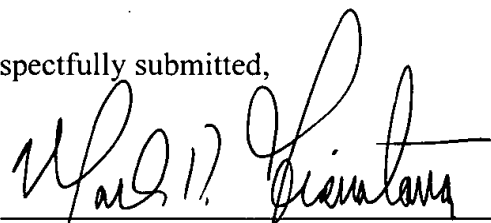
If the Examiner wishes to discuss any of the issues herein, or otherwise if it would facilitate the examination of this application, he is respectfully requested to call the undersigned at the telephone number below.

No additional fee is believed associated with this submission. If any additional fee is required, please accept this as authorization to charge Deposit Account No. 50-1631. A **duplicate copy of this sheet is enclosed.**

Date: *December 4, 2002*

Respectfully submitted,

By



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